

SOURCE SELECTION AND EVALUATION USER'S GUIDE

UNIVERSITY OF CALIFORNIA

LAWRENCE BERKELEY
NATIONAL LABORATORY

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Introduction

This Source Selection and Evaluation User's Guide is for use by both requesters and Procurement personnel. The purpose of this Guide is to provide general guidance on source selection and evaluation when factors other than cost/price are primary, but much of this guidance is also applicable when cost/price is the primary, but not the only factor. The goal is to select the supplier offering the best value to the Laboratory, whether that value is determined by cost/price only, or by evaluating other factors that are more important than just cost/price alone. This Guide augments SP 15.4 and is designed to offer ideas and provide general examples given specific procurement scenarios. It is intended to encourage users to be creative regarding specific issues relative to individual procurements. **It is not meant to be prescriptive.**

This Guide should be used when non-price evaluative criteria are significant, such as:

- Contracts for complex fabrications or equipment;
- Complex service contracts;
- Contracts for research and development;
- Systems agreements;
- Large dollar value construction contracts for critical facilities;
- Decontamination and Decommissioning subcontracts; or
- Any other instance where the procurement specialist determines that use of non-price evaluative criteria is in the best interest of the Laboratory.

The decision to evaluate selection factors other than cost/price is not necessarily determined by the type of product, such as commercial/non-commercial goods/services, or by contract type. The explicit recognition of risk is one of its most beneficial features. Factors other than cost/price should always be used when performance risk is a significant issue. Types of performance risk to consider include, but are not limited to, technical, schedule and business.

Technical risk normally exists when circumstances are such that we ask the question: "Will the proposed design/product work as claimed?" Risks associated with performance/delivery schedule exist when we question if the work can be completed in the time proposed. Business risk exists when we have a concern regarding the offeror's capability to perform the work as proposed.

Including factors in addition to cost/price is common in competitive, negotiated contracting to select the most advantageous offer by evaluating and comparing other factors or performance features in addition to cost or price. It allows offerors flexibility in selection of their best proposal strategy through tradeoffs that may be made between the cost and non-cost evaluation factors. It should result in an award that will give the Laboratory the greatest or best value for its money.

The following summarizes the usual steps to be followed when factors other than cost/price are primary.

- Establish Buying Team
- Prepare Solicitation
- Conduct Evaluation/Selection Phases
- Create Selection Statement

The following pages will provide specific guidance on each step of the process and concepts related to those steps. Various exhibits, including standard forms and further supplemental information, are also included for reference at the end of the document.

The Buying Team

The first step is to establish the buying team. The buying team develops the minimum requirements (if necessary), the desired performance features and supplier attributes, evaluates the offers and makes the selection decision(s). Members should be individuals who have long-term responsibility for the project and a vested interest in the success of the project. It is essential that project management keep in mind that the person(s) appointed to the buying team **must be technically knowledgeable** and **must be empowered** to make buying team decisions, including final selection of the supplier. The buying team should be kept as small as possible. One advantage to keeping the buying team small in size is that it's easier to control the integrity of the procurement (e.g., conflict of interest and non-disclosure issues). However, recognizing that "buy-in" or technical expertise may be represented in several organizations or the complexity of the project may involve multiple technical disciplines, larger decision-making teams may be appropriate. In all cases participation and decision-making should be limited to the fewest number of individuals possible.

All members of the buying team must be aware of BUS 43 Part 7 that implements the State of California Political Reform Act. It is the procurement specialist's responsibility to ensure to the best of their ability that (1) members of the buying team are aware of the BUS 43 Part 7 requirements and (2) there are no real or apparent conflicts. A copy of BUS 43 Part 7 is included as an exhibit. A copy of the "Confidentiality and Conflict of Interest Acknowledgment" (for University employees) (Exhibit V-a) and "Confidentiality and Conflict of Interest Certificate" (for non-University employees) (Exhibit V-b) are included as exhibits for use when necessary (e.g. selections which are sensitive, may be contentious or involve proprietary information).

The procurement specialist is the Chairperson of the buying team. As such, the procurement specialist is the organizer, planner and final arbiter. The procurement specialist is responsible for preparation and control of all documentation and is ultimately responsible for the conduct of the selection process and the final outcome. The procurement specialist is responsible for ensuring professional, fair and ethical treatment of all offerors. While offerors and prospective offerors must be treated fairly and impartially, they need not be treated the same.

The requester is the technical expert. The requester's responsibility as a member of the buying team is to provide expert technical judgment. Others may supplement the buying team when

subject-matter experts are required to evaluate desired performance features or evaluation factors to determine best value selection. These subject matter experts are normally considered “non-voting” advisors to the buying team and do not participate in the final decision making. If required, they should be brought in to provide technical input on **all** the offers in a consistent manner. For example, if there are three offerors participating, the subject matter experts must provide, in a consistent format, input relating to all three proposals (not just one or two). When their function is completed, they should be excused.

Developing a Potential Source List

The buying team should establish a list of potential sources that will be sent the solicitation based on the requirements in SP 5.1 *Publicizing Subcontract Actions*. A market survey involving a Request for Expressions of Interest or site visits may be necessary depending on the market knowledge of the buying team members and available source identification resources.

It is best to keep the list of prospective offerors minimal, if possible. In order to do this, pre-qualification of potential offerors may be considered. Pre-qualification criteria could include financial stability, past performance, or experience in performing a similar job. Sources contacted for pre-qualification must be clearly informed regarding the criteria to be used for pre-qualification. The buying team should attempt to qualify suppliers with respect to the minimum requirements associated with the solicitation to the greatest degree possible at this stage in the process. This will minimize the use and influence of minimum requirements during the selection phase.

Solicitation

The buying team develops the solicitation containing, as appropriate, minimum requirements, desired performance features, desired supplier attributes and the basis for award. The solicitation will normally be in letter form.

Minimum requirements represent the mandatory performance conditions or capabilities and/or necessary supplier qualifications or experience which must be present to insure successful performance of the contract. They may be included in a solicitation to establish the basis for preparing offers and to provide a mechanism for eliminating frivolous or non-responsive offers. Minimum requirements should be used only when it is necessary to establish a supplier’s ability to meet absolute performance demands and care must be taken to preclude the minimums from becoming a standard which overshadows or overwhelms consideration of value. Minimum requirements are specifically identified within the statement of work, general scope of work or technical specifications (e.g., specific delivery requirements, specific technical capabilities), must be clearly stated and easily determinable, and must state any restriction that would affect an offer. An offeror’s failure to meet any minimum requirement is reason to eliminate it from further consideration so they must be used with great care.

Desired performance features and supplier attributes are the qualitative and quantitative criteria used for the subjective evaluation of offers. Combined with minimum requirements, they constitute the evaluation factors which determine selection of a supplier for award. They should be topical in nature, simple, and stated in very broad terms.

ABM On-Line notes that too many performance features and supplier attributes "...can result in unintended dilution. Effective best value determination relies on a limited set of meaningful discriminators that do not descend into obscure levels of granularity."¹ Evaluation factors should be performance based and permit offers to be submitted and evaluated in relation to the value derived by the Laboratory.

The solicitation should also convey that the offeror may propose, and the Laboratory can consider, other factors not identified in the solicitation as evaluation factors. This tactic enables the Laboratory to utilize the expertise of the market and serves as a mechanism to acquire new knowledge. An important function of evaluation factors is to communicate to prospective offerors what the Laboratory considers important for successful performance.

Evaluation factors can be grouped into the following categories.

Affordability, Capability, Applicability and Feasibility²

These categories provide a structure for developing minimum requirements, desired performance features, and desired supplier attributes as evaluation factors for an individual procurement. This is not a mandatory solicitation format. However, necessary performance elements can most likely be associated with one of these categories. All categories may not be required for every action; most procurements will focus on affordability and capability. For example, many common services can be procured using a combination of factors associated with cost/price (Affordability) and supplier performance risk (Capability). A selection determination for a complex R&D action would probably require factors from all four categories. The important thing to remember is that each procurement is distinct and the selection methodology must be tailored to fit the action. The categories, called the Four 'Bilities[®], can be defined as follows.

Affordability - Elements related to cost/price. Project/product cost and other cost-related factors, including costs incurred by the University in order to acquire and use (install, implement, house, maintain, operate, etc.) the product or service.

Capability - Ways to assess performance risk through evaluation of the company's past performance and personnel, and possibly physical and financial resources. What is the offeror's record of accomplishment? What are the offeror's capabilities and how well is the offeror positioned to apply the resources necessary to perform the work? Can the offeror perform the work without extensive oversight? The buying team must make an important distinction when describing the necessary capabilities of an offeror. There are times when the University simply wants to buy a design for an item or a project. In other instances, the University may be more interested in contracting for a "design team" and letting that team create the design which the University will ultimately purchase.

Applicability This category assesses how the application of relevant desired performance features or supplier attributes relate to the "technical" needs of the Laboratory. How well does

¹ ABM On-Line, "Business Practices: Best Value"

² Derrol J. Hammer, "Self-Balancing Evaluation using Four 'Bilities for Best Value Source Selection[®]," The Regents of the University of California, 1997

the work or proposed methodology meet or exceed the stated goals? How valuable are the features of the product and/or service to the Laboratory's intended use? Which solution meets the Laboratory's requirements the best?

Feasibility - Ways to assess performance risk through evaluation of the proposal leading to a technical assessment of the probability of success and/or a cost realism assessment to determine the plausibility of successful completion. Cost realism is performed to validate that the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirement, and are consistent with the work elements contained in the offeror's technical proposal.

Feasibility may involve elements related to the "quality" of the proposed product, process or solution. How well will the work proposed by offerors succeed in meeting stated goals? Is there a risk that the proposed design/product will not work as claimed? This category is useful when history of past performance and experience is not sufficient to predict performance (e.g., when procuring cutting edge technology or R&D).

Some typical factors or features associated with each of the categories are listed in an Exhibit II. These are intended to stimulate thought and assist in developing desired performance features.

The solicitation must state the basis for selection. The source selection determination is based upon achieving the most advantageous balance between the quality of the product or service (through comparison of evaluation factors) and price or cost. **Both** are always considered and evaluated. Including non-cost/price evaluation factors is based on the premise that, if all proposals are essentially equal in terms of qualitative merit, award will be made to the responsible offeror with the lowest evaluated price or the lowest probable cost. However, tradeoffs between cost or price and evaluation factors allows the Laboratory to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal (including determinations regarding reduced performance risk) must merit the additional cost. The foregoing concepts must be conveyed to the offerors in the solicitation.

Consistent with FAR requirements, the Laboratory does not require the establishment and disclosure of predetermined numerical weights. Numerical weights convey a false impression of precision and tend to prejudice the potential impact of innovative and/or outstanding features which may be independently proposed by offerors. However, as suggested by Vern Edwards, we should convey to offerors our sensitivity to price versus technical factors as best we can. Vern states:

"Attempts to do so with precision can be misleading, since the real importance of any factor can only be understood after the proposals have been evaluated and the ranges of differences among them on the various factors have been determined. For example, if the technical differences among competing proposals are significant, but the differences in price are insignificant, then technical factors will be the most influential factors in the determination of best value. On the other hand, if technical differences among competing proposals are insignificant, but price differences are significant, then price will be the most influential factor."³

³ Vernon J. Edwards, "Questions & Answers about Best-Value Source Selection," (Washington, DC:

“Rarely does a purchaser know exactly what it wants until it knows what is available and predetermined weights may be made senseless by the outcome of the proposal analysis.”⁴

Vern also states:

“The best-value determination reflects a combination of subjective and objective judgments. ‘There is nothing wrong with being subjective, as long as you’re rational.’”⁵

When preparing the solicitation, it is important to leave room for flexibility in the conduct of evaluations and negotiations by reserving the Laboratory’s right to award on the basis of initial offers, or to negotiate with any or all offerors.

After all elements of the solicitation have been defined by the buying team, the solicitation can be issued to the prospective offerors.

Oral Presentations

The solicitation may require each offeror to submit part of its proposal through oral presentations. Oral presentations by offerors, including video or web conferencing, may be used to substitute for, or augment, written information. (However, certifications, representations, and a signed proposal must be submitted in writing.) Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process and, in fact, the buying team should consider, if feasible, the use of either technical proposals or oral proposals, but not both. Oral presentations may occur at any time in the acquisition process (e.g., pre-qualification; pre-solicitation; in conjunction with proposal). Oral presentations are conducted to gather additional information and obtain clarification. Nash and Cibinic state:

“Oral presentations are an excellent substitution for the written essays that have been required to demonstrate an offeror’s understanding of the work (and hence its capability to perform the job) but there are many procurements where there is no need to assess understanding of the work (e.g., supplier of common services) and therefore no need for an oral presentation.”⁶

Oral presentations are useful in understanding **how** the offeror would perform the work which is of particular importance in the R&D environment.

Government Contracts Program, June 1993) 10

⁴ Edwards 12, 17

⁵ Edwards 23

⁶ Nash and Cibinic, Vol.10 No. 6 (June 1996): 85

Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following.

- The Laboratory's ability to adequately evaluate the information
- The need to incorporate any information into the resultant contract
- The impact on the efficiency of the acquisition
- The impact on small businesses

When oral presentations are required, the solicitation should provide offerors with sufficient information so they may prepare properly. The solicitation may include the following.

- The types of information to be presented orally and the associated evaluation factors that will be used. Offerors should be encouraged to speak to the critical aspects of the job and how they would treat any hard issues. It is recommended that an agenda/schedule be prepared and provided to the offerors in advance.
- The qualifications of personnel who will be required to provide the oral presentation. For example, it's recommended that the offerors' technical personnel (Project Manager, etc.) be requested to participate. We **do not** want the presentation done solely by the offerors' Sales and Marketing personnel.
- The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations.
- The location, date and time for the oral presentations.
- The restrictions governing the time permitted for each oral presentation.
- The scope and content of communications that may occur between the Laboratory's participants and the offeror's representatives as part of the oral presentation (e.g., that the presentations may be considered as a forum to allow discussions).
- State whether the presentation will be recorded (e.g., videotaped).

When oral presentations are conducted after evaluation of the written proposals, the evaluation worksheet comments may be useful in structuring both the agenda and questions to get more information and clarification. Additional technical experts should be brought in, if necessary, to validate responses to questions and areas of concern. The subcontract file should contain a record of oral presentations to document what the Laboratory relied upon in making the source selection decision. The method and level of detail of the record (e.g., videotaping, written minutes, Laboratory notes, copies of offeror briefing slides or presentation notes) will be at the discretion of the procurement specialist.

Oral presentations offer the buying team a unique opportunity to evaluate an offeror in depth. The face-to-face meeting allows the buying team to assess the abilities of the offeror's personnel first hand. How the presenters communicate among themselves, for instance, can predict how they will communicate with the buying team after award and during performance of a

subcontract. The conduct of the presenters in the relatively stressful environment of a presentation and interview with a potential customer can indicate how well the offeror will function during performance of a subcontract. Further, the interrelationship of the offeror's presentation personnel can divulge which individual really "runs the show."

Evaluating Experience and Past Performance

To properly consider performance risk in evaluating prospective offerors, an offeror's capability can usually be assessed by evaluating past performance and experience. Nash and Cibinic state:

"To determine a contractor's experience the questions are: **What have you done?** and **How many times or for how long have you done it?** The question for past performance is: **How well have you done it?** Experience must be considered when evaluating past performance. The evaluation of past performance is a meaningless exercise unless it is related to the type of activity that will be required under the contract. However, it is essential that past performance and experience be evaluated separately."⁷

There are two types of experience: personnel experience and corporate experience. Companies and their employees do not necessarily have identical levels of experience. In some cases, lack of corporate experience may be overcome by the experience of employees.

Personnel experience should be evaluated if "Key Personnel" are being incorporated into the contract or if the buying team wants to evaluate the experience of employees who are directly contributing to performance of the contract. The buying team might consider it relevant to review the experience of corporate staff other than key personnel. This may be useful in evaluating the personnel resources that could potentially be available to those directly working on the contract. Resumes should be requested to review personnel experience.

Corporate experience can be evaluated to ascertain organizational capability and the company's experience on similar projects. The premise here is that if a capable company is selected, the company will see to it that capable employees will be assigned to the contract. The procurement specialist should request a list of similar project experience from the offeror, including references to contact. The number of references required should be specified, if feasible.

The buying team may decide to evaluate personnel experience or corporate experience, or both the experience levels of the employees who will be assigned to the contract and the organizational capability. A preliminary evaluation of experience can be conducted at the pre-qualification stage through a site visit and/or during the proposal/evaluation stage through proposal information submitted and/or oral presentations.

Once it's determined that past experience will be evaluated, the types of experience relevant to the procurement must be determined. In many cases, Requests for Proposals merely indicate that experience on "similar" projects will be considered. There are many factors to be considered in determining similarity, including dollar value, complexity, and nature of the work. In markets

⁷ Nash and Cibinic, Vol. 11 No. 6 (June 1997): 90

with adequate sources more specificity is appropriate. If available sources are limited, too much specificity may limit competition. The buying team must use good judgement to determine whether it is advantageous to specifically describe the nature of experience desired.

Specifying a minimum number of years of experience is discouraged, as it tends to restrict competition and may exclude otherwise well-qualified offerors that are only fractionally deficient. It is more appropriate to ask the offeror to describe its most recent experience, thereby utilizing past experience as an evaluation factor instead of a minimum requirement. Nash and Cibinic state:

“By definition, experience requirements restrict competition. The question is whether the restrictions are necessary to meet the Government’s needs. These restrictions might be relevant, for example, with solicitation provisions relating to human safety. In this regard, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results, but the highest possible reliability and effectiveness.”⁸

They further state:

“The intelligent use of experience requirements can be a great asset in best value procurements. A contractor with vast experience will probably present less risk to successful performance than would a contractor with very little experience but with a somewhat higher past performance rating.”⁹

Past performance can be evaluated through references provided by the offeror. An “interview” should be conducted to obtain relevant information regarding the offeror’s past performance on a specific project. Checking a solid cross-section of references on past contracts is necessary to obtain a fair assessment of an offeror’s capability. A representative sample of reference responses is necessary for evaluation of past performance. One reference response **is not** an adequate sample. Sample questions relative to past performance are located in Exhibit III

The buying team should take care to look for trends in an offeror's past performance history and must avoid making decisions based on a single point of data. An offeror may have had difficulty performing on a recent subcontract for a variety of reasons. The buying team must evaluate the offeror's performance as it worked its way through the difficulty. Did the offeror persevere and solve the performance problems? If so, what is the likelihood that the offeror learned from its problems and will avoid them on a follow-on subcontract?

Past performance evaluation may also include the offeror's self-assessment of its performance on projects referenced in the proposal. The offeror should be encouraged to address, in their view, what went right with a project and what went wrong. The buying team can then focus on how the offeror leveraged what went right to add value to future projects, and how the offeror addressed what went wrong, to prevent reoccurrence.

⁸ Nash and Cibinic, Vol. 11, No. 6 (June 1997): 93-94

⁹ Nash and Cibinic, Vol. 11, No. 6 (June 1997): 95

Also, if the offeror is a Key Supplier and has worked previously at the Laboratory, the Supplier Performance Review within the “Supplier Management Program” should be consulted to review their past performance with the Laboratory. The Supplier Performance Review assesses performance in the following major categories.

- Quality of Work
- Timeliness of Performance
- Cost Control
- Business Relations

This database is maintained by the Small Business & Supplier Management Office.

Evaluation, Negotiation and Selection Process

The buying team must evaluate the offers in accordance with the criteria set forth in the solicitation. Remember, however, that the solicitation is a flexible document which allows offerors to propose different solutions to a problem and which also allows the University to consider solutions different from the ones it may have envisioned at the outset.

Whenever possible, the buying team should make a selection based upon the initial proposal evaluation. This can occur whenever an offer clearly represents the best value or whenever there isn't a reasonable expectation that someone else will prevail subsequent to negotiations. If a selection can't be made based upon the evaluation of initial proposals, the buying team must consider requesting revised proposals or conducting parallel negotiations with selected finalists. However, by requiring revised proposals, the buying team should be careful that offerors are not required to “rewrite” their technical proposals. Until a contract is signed, selection is not final.

The buying team must avoid trying to force an evaluation factor to be a discriminator simply because it was included in the solicitation or presented by an offeror. Source selection is a dynamic process, and what seemed important when preparing the solicitation may become less so when evaluating the proposals received. Offerors may see a project in a different light than the University and present new evaluation factors for the University's consideration as a result. The buying team must maintain its flexibility and evaluate proposals with the end in mind, remembering that there may be many different means to achieve a desired end.

Negotiations can be conducted with one or more offerors. Negotiations are conducted by the procurement specialist, but supported by the buying team. All offerors must be treated in a fair and equitable manner and care should be taken to ensure that one offeror's proprietary or business-sensitive information is not disclosed to a competitor. During negotiations, the procurement specialist can transfer concepts but no proprietary information from one offeror to another. For example, the procurement specialist should not transfer information concerning how to do a specific task, but may rather inquire if the offeror can do a specific task. During this time, the procurement specialist should negotiate all requirements not provided for in the proposal that will be included in the contract, and negotiate for “better promises,” if possible. The procurement specialist should understand the difference between promises made by the offeror

that should be included in the contract and capabilities described by the offeror which are considered “offer” factors.

The following offers guidance on “how to” evaluate proposals.

- 1. Procurement Specialist** Distribute proposals to the buying team. Separate technical proposal from price proposal if you think price proposal will influence buying team evaluation.
- 2. Buying Team** Determine if offerors meet minimum requirements.
If not, no further consideration.
If yes, proceed with evaluation and selection.
- 3. Procurement Specialist** Review all desired performance features and supplier attributes with the buying team.
- 4. Procurement Specialist** Prepare evaluation comment worksheet, as appropriate, for each member of the buying team (a sample is included as Exhibit IV). Make sure to include an area to comment on other desirable performance features that offerors may introduce or propose that were not included in the solicitation.
- 5. Buying Team** Utilizing the worksheet, if appropriate, develop comments (re: strengths/weaknesses/risks) related to stated evaluation factors. (These comments can be useful during in a debriefing session.)

Buying team convenes to reach consensus on evaluation comments.
- 6. Procurement Specialist** If price proposal previously separated, introduce price/cost to the buying team.
- 7. Buying Team** Weigh trade-offs between price/value.
Determine if able to make selection based upon initial evaluation.
If not, request revised proposals or negotiate with two or more, then repeat process as necessary, or resolicit.
If yes, proceed with source selection.
- 8. Buying Team** Make source selection decision.
- 9. Procurement Specialist** Document selection in a selection statement.

Selection Statement

Once the source selection has been determined, the procurement specialist must document the selection in a selection statement. The statement must convey the rationale for the selection. The selection statement must discuss the discriminating factors (those which set the successful offeror apart from a value perspective) which form the basis for the selection. As stated by Nash and Cibinic:

“In addition to being consistent with the evaluation factors, the best value decision must be the result of exercise of judgment by the buying team and the reasons in support of this judgment must be specifically documented.”¹⁰

The statement should convey the message that the buying team determined that the selected source offers the best value to the Laboratory based upon a combination of cost/price and qualitative and quantitative merit. If two companies are substantially equal regarding merit, then the selection would be based upon the lowest price/cost and the selection statement should reflect such. Guidance offered by Nash and Cibinic states:

“Because the decision is a judgmental one, the buying team should consider whether the differences between cost and other factors justifies the award to a higher- or lower-cost offeror.”¹¹

They further suggest that:

“The acceptance of a higher-priced, higher-rated offer over a lower-priced, technically acceptable offer should be supported by a specific, documented determination that the technical superiority of the higher-priced offer warrants the additional cost involved. The documentation should reflect what factors were considered and what trade-off determinations were made, to include benefits associated with additional costs.”¹²

Although the rationale for the selection decision must be documented, that documentation need not provide quantification of the tradeoffs that led to the decision. Nash and Cibinic again state that a “...reasonable determination can be justified without resorting to numbers.”¹³

Leading Edge Technology and Scientific Applications

As mentioned, including significant evaluated factors other than cost/price is well suited to requirements involving leading edge technology or scientific applications such as: prototypes; development and engineering efforts; basic and applied research; and high technology systems and equipment. In such circumstances innovation and distinct differences in technical approach or the use of technology are typical and the solicitation must be formed in such a way to allow offerors flexibility and discretion in developing the best solutions possible for the requirement.

¹⁰ Nash and Cibinic, Vol. 10, No.4 (April 1996): 50

¹¹ Nash and Cibinic 50

¹² Nash and Cibinic 51

¹³ Nash and Cibinic 52

Accordingly, both the description of the requirement and the evaluation criteria must be broadly described in terms which will focus on the desired performance or outcome rather than specific design features.

Typically, any acquisition has budget limitations, forcing the customer to specify only what is believed to be affordable, rather than what would actually meet current and future demands. When purchasing state-of-the-art products which have a high rate of technology turnover, such as computers, it is important to provide flexibility for offerors to propose as much capability or capacity possible which could be afforded within the programmed budget. Because, in a competitive environment, it is not normally advisable to reveal the budget figure, using multiple options to obtain pricing for increased capacities and/or capability will provide the customer with the flexibility to take advantage of exceptional pricing circumstances.

Additionally, when there are limited sources or the budget can accommodate a variety of possible technical solutions, it may be desirable to provide for multiple and/or split awards. Evaluation of factors other than cost/price, and the Four 'Bilities[®] criteria, are particularly suited to those cases that demand maximum flexibility in making selections, especially when acquiring a diverse combination of skills or solutions would provide greater overall value than selecting a single best product. In such cases it will be necessary to customize the Request for Proposal language to properly address the basis for making source selections.

Requester's Perspective

As previously stated, best value is appropriate for any procurement in which suppliers or their products or services can differ from one another significantly on one or more factors other than cost/price. Nash and Cibinic note that:

“Best-value procurement is an art, not a science. It calls for a judgmental decision by the buying team based on a rational analysis of competing proposals. This is good in that it permits the government to fully assess its options and award to the offeror proposing the best alternative.”¹⁴

The technical requester is a very important contributor in this process. As a participant on the buying team, the technical requester must keep in mind that the selection criteria are not necessarily precise objective measures. ABM On-Line states that:

“Source selection criteria must be relevant and lend themselves to evaluation and application in a manner that will be fair to those being evaluated. The criteria will be used to trade-off internal objectives, such as payment of an additional amount for substantially better performance, or selection of a technical solution that has a higher probability of success even though it may not represent the lowest initial cost. Potential offerors must be told what factors will be used in evaluating proposals, and these evaluation criteria must be consistently applied.”¹⁵

¹⁴ Ralph C. Nash, Jr., “Questions & Answers about Best-Value Source Selection; Best-Value Source Selection, Commentary and Analysis,” (Washington, DC: Government Contracts Program, June 1993) 45

¹⁵ ABM On-Line, “Application of Best Value to Large/Complex/Sensitive Procurements”

Further, Nash and Cibinic add that:

“The evaluation factors must be reconsidered on each BVSS [Best Value Source Selection] procurement. In doing so, the following questions should be asked: What purpose does each evaluation factor serve? What are the minimum number of factors necessary to make a sound best value decision? How can I minimize the costs of the competition? How can I conduct this procurement with maximum efficiency?”¹⁶

When a solicitation including evaluation factors in addition to cost/price is issued, the Laboratory does not and cannot know which evaluation factor will ultimately have the most influence on the selection of the winner. An important thing to remember is that the importance of any factor to the determination of the “winner” depends on the marginal differences among the offerors.

During the selection and evaluation process it is important to maintain the integrity of the procurement process. During the process, the buying team should not engage in conduct that:

Favors one offeror over another;

Reveals an offeror’s technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror’s intellectual property to another offeror;

Reveals an offeror’s price without that offeror’s permission; or

Knowingly furnishes source selection information.

As previously stated, **it is essential that the person(s) appointed to the buying team be technically knowledgeable and empowered to make buying team decisions.** Decisions must be made within the buying team in an efficient and effective manner. This cannot be done if the technical requester is a proxy participant rather than an empowered and active member of the buying team.

¹⁶ Nash and Cibinic, Vol. 11, No. 1 (January 1997): 10

**UC Business and Finance Bulletin BUS-43, Materiel Management
July 1, 2005**

**PART 7
EMPLOYEE-VENDOR RELATIONSHIPS**

Business 43, Part 7 sets forth special limitations and requirements covering acquisition of goods or services by the University, including independent consultant and independent contractor services, *when the transaction involves an employee-vendor relationship, as opposed to an employer-employee relationship*. Employer-employee relationships are governed by appropriate personnel rules, including Personnel Policy 82, Conflict of Interest.

I. DEFINITIONS

Employee - any individual who is presently employed by the University.

Employee with Teaching or Research Responsibilities – an academic appointee who is engaged in teaching and/or research activities, and certain staff employees (e.g., Staff Research Associates) who may participate in teaching or research activities.

Former employee – an individual who has retired or separated from the University, was dismissed, or was otherwise formerly employed by the University

Near Relative – the spouse, child, parent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of a University employee, and step-relatives in the same relationship. *Near relative* also includes the domestic partner of a University employee and a relative of the domestic partner in one of the foregoing relationships.

Employee-Vendor Relationship - a relationship in which:

- An employee, acting alone, proposes for a consideration to lease or sell goods or to provide services to a University department; or
- An employee owns or controls more than a 10% interest in any business which proposes for a consideration to lease or sell goods or to provide services to a University department; or
- A former employee, acting alone, proposes for a consideration to lease or sell goods or to provide services to a University department; or
- The near relative of an employee, acting alone, proposes for a consideration to lease or sell goods or to provide services to a University department, when the employee has, in any connection with his or her University employment, any responsibility for or will be involved in any manner in the department's decision to accomplish or approve the transactions; or
- The near relative of an employee owns or controls more than a 10% interest in a business, which proposes for a consideration to lease or sell goods or to provide services to a University department, when the employee has, in any connection with his or her University

Exhibit I
(Continued)

employment, any responsibility for or will be involved in any manner in the department's decision to accomplish or approve the transactions.

Responsible Official - the Chancellor of a campus or the Director of a Laboratory, or designee.

II. BASIC POLICIES

- A. Separation of Interests - It is the policy of the University to keep separate an employee's University and private interests, and to safeguard the University and its employees from charges of favoritism in the acquisition of goods and services.
- B. Conflict of Interest - The State of California Political Reform Act prohibits an employee from making or participating in the making of a decision if there is a financial conflict of interest. Requirements governing such decision making are set forth in the University's Conflict of Interest Code and must be observed when the University purchases goods and services.
- C. Restrictions on Purchases/Leases/Contracts. The following rules apply to any purchase or lease of goods or contract for services made with a University employee, former employee, or the near relative of an employee:
 - 1. Employee - No purchase or lease of goods or contract for services may be made with a University employee who has an employee-vendor relationship, as defined in Section I. However, the University may enter into a contract for goods or services with an employee who has teaching or research responsibilities, provided that the Materiel Manager or designee has made a specific determination that the goods or services are not available either from commercial sources or from within the University.
 - 2. Former Employee - The University may not purchase or lease goods from or contract for services with any former employee who has an employee-vendor relationship as defined in Section I, including one who has had teaching or research responsibilities, when:
 - a. Less than two years' time has elapsed since the individual separated from University employment, and the individual had been engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract during the period of employment; or
 - b. Less than one year's time has elapsed since the individual separated from University employment, and the individual had been employed by a department in a policy-making position in the same general subject area as the proposed contract.

Notwithstanding the foregoing provisions of paragraphs a. and b., the University may enter into a contract for *services* with a *retiree* immediately following retirement if the retiree did not participate in any way while serving

Exhibit I
(Continued)

as an employee in the making of the contract for services. The post-employment restrictions in paragraphs a. and b., however, apply to any former University employee, including a retiree, who proposes to sell or lease goods to the University.

3. Near Relative - The University may purchase or lease goods from or contract for services with the near relative of *any* employee, provided that the Materiel Manager or designee has made a specific determination that the goods and services are not available either from commercial sources or from within the University.
- D. Inspection and Verification of Vendor Status - Whenever it becomes necessary to ensure an understanding of the facts presented, the Responsible Official or designee must inspect the business premises and records of a prospective employee-vendor or a near-relative vendor.
- E. Exceptions - Within constraints imposed by the Political Reform Act and Public Contract Code Sections 10515 et seq., each Responsible Official or designee is delegated authority to approve exceptions to this policy under unusual or extenuating circumstances.

III. CERTIFICATION REQUIREMENT

- A. Circumstances Requiring Certification - A University employee, former employee, or the near relative of an employee must submit a written and signed certification conforming to the requirements of Section III B. and C. with any quotation or proposal to the University.
- B. Contents - The certification statement must:
 1. Indicate the University department(s) and position(s) of the employee-vendor. In addition, a former employee must state the date of his or her separation from the University.
 2. Disclose the employee's, former employee's,
 3. Specify the employee's and/or near relative's relationship to or financial interest in any business entity involved in making the quotation or proposal.
 4. Indicate whether the employee has any responsibility for or will be involved in any manner in the departmental decision to accomplish or approve the transaction. In the case of a former employee, indicate whether the employee had any responsibility for or was involved in any manner in the departmental decision to accomplish or approve the transaction.
 5. Certify that no University time, material, equipment, or facilities have been or will be used in connection with any resulting purchase order or contract.

Exhibit I
(Continued)

- C. Approvals - The required certification must be submitted to the location's Responsible Official or designee. When the work involves an intercampus or Laboratory transaction, the certification must be submitted to the Responsible Official at the location where the requirement originates. In addition, a recertification is to be submitted prior to the extension/renewal of the terms of a contract. The Materiel Manager is responsible for notifying the submitting department of approvals or denials of requests involving employee-vendor relationships.

Exhibit II
Typical Evaluation Factors

AFFORDABILITY - Project/Product cost and other cost-related factors.

Basic Price
Options
Shipping
Taxes
Import Duty
Life-Cycle Costs:
 Maintenance
 Utilities To Operate
 Integration To Existing Systems
 Conversion Costs
Cost-Sharing Profile
Warranty
Fee Rate
Indirect Rates
Cost Containment Performance

Examples

 Cost realism/level of effort
 Proposed fee/profit
 Product cost
 Life-cycle costs (maintenance cost, operating costs, other LBNL costs)

CAPABILITY - How adequate are the offeror's proposed resources for performing the work?
(Business risk)

Acceptance Of Terms And Conditions
Availability Of Parts
Availability Of Project Team
Capacity For Producing And Testing Required Volumes And Sizes
Demonstrated Capability To Produce And Test
Management/Corporate Capability
Demonstrated Ability To Meet Schedule On Similar Efforts
Expertise And Skill Level Of Key Personnel
 Directly Related/Similar Work
 General
Production Personnel Experience, Skills, Knowledge And Abilities
Overall Experience Of Company As A Whole
Extent And Adequacy Of Licenses, Permits, Certifications, Etc.
Facilitization/Instrumentation Requirements
Location Relative To LBNL
Openness Of Technical Staff To New Ideas

Exhibit II
Typical Evaluation Factors
(Continued)

Past Performance Record
 Reference Check - Success Record Under Similar Conditions
 Compliance With Budgets
 Compliance With Schedule
Past Record Of Work For LBNL
Pilot Production Facilities
Physical Resources Availability
Project Management Structure
Quality Of Current Written Policies And Procedures
Quality Of Project Management Plan
Quality Of Systems:
 Accounting
 Information
 Management
 Personnel
 Purchasing
 Quality
 Safety
 Security
Quality/Test Plans And Facilities
Repair Response Time
Structure And Balance Of Project Team
Subcontractors
Use Of Own Forces Vs. Subcontracting Out
Willingness To Work With LBNL

Examples

 Personnel - availability and background/experience
 Control - how adequate management?
 Adequacy of Facilities
 Financing
 Accounting Systems
 Quality Systems

APPLICABILITY - How well does the proposed work or methodology benefit the stated goals?
How valuable are the features of the product and/or service to the intended use?

Alternate Equipment Lists
Alternate Performance Characteristics Of Benefit
Approach To Relationship With LBNL
Client Relationships
Compactness Of Design
Creativity Of Design, Technique Or Format To Solve LBNL Problem
Ease Of Use
Functionality
Future Commerciality

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Exhibit II
Typical Evaluation Factors
(Continued)

Manner Of Compliance With Requirements
Level Of Benefit By Performance In Excess Of Requirements
Overall Quality
Practicality Of Approach
Proprietary Processes Or Equipment Or Novel Materials To Increase Performance
Proven Hardware In The Field Used For Similar Purpose
Small Business Subcontracting
System Integration/Compatibility
Technical Sophistication

Examples

How much benefit does higher accuracy provide for our use?
How well does this feature actually work for our problem?
How much work do we have which would take advantage of greater capability?

FEASIBILITY - How well will the proposed work succeed in meeting stated goals? What is the probability that the proposed design/product will work as claimed? (Technical risk assessment)

Milestone Schedule
Innovative Approach
Improved Reliability
Performance Characteristics In Specification
Process Design
Process Flow Diagrams
Soundness Of Approach Or Methodology
Technical Approach
Delivery Schedule
Alignment Sensitivity
Novel Designs
Initial Production Plan And Schedule
Production Plan And Process Flow
Mean Time Between Failure (MTBF)

Examples

Assessing whether the design assures that the product can sustain required accuracy?
How much debugging will the software require?
How well the proposed process is actually capable of producing a product with the proposed performance?
What are the risks that the work can be completed in the time proposed?

Typical Past Performance Questions

Company Name: _____ Date: _____

Former Customer: _____ Spoke With: _____

1. How technically complex was the job performed by _____?
_____?

- _____ Extremely complex
- _____ Some parts of it were extremely complex
- _____ Average complexity
- _____ Not very complex at all
- _____ Not applicable

2. To what extent did _____ meet your technical requirements?

- _____ Considerably surpassed minimum requirements
- _____ Exceeded minimum requirements
- _____ Met minimum requirements, but was weak in _____
- _____ Less than minimum requirements.
- _____ Failed to _____
- _____ Not applicable

3. To what extent did _____ adhere to the delivery or milestone schedules?

- _____ Considerably surpassed minimum requirements
- _____ Exceeded minimum requirements
- _____ Met minimum requirements
- _____ Less than minimum requirements
- _____ Not applicable

4. To what extent did _____ meet the proposed cost estimates?

- _____ Less than estimated cost
- _____ Comparatively equal to estimate
- _____ Exceeded the cost estimate
- _____ Considerably surpassed the cost estimate
- _____ Not applicable

5. How cooperative was _____ in resolving disagreements over terms and conditions or performance issues?

- _____ Very cooperative
- _____ Cooperative
- _____ Not very cooperative

Exhibit III
Typical Past Performance Questions
(Continued)

6. How effectively did _____ meet its contract management requirements in the following areas?

Required reports and documentation

_____ Very effectively
_____ Effectively
_____ Not very effectively

Committing adequate resources in a timely fashion

_____ Very effectively
_____ Effectively
_____ Not very effectively

Responding positively/promptly to technical directions, contract change orders

_____ Very effectively
_____ Effectively
_____ Not very effectively

Interfacing with your staff

_____ Very effectively
_____ Effectively
_____ Not very effectively

Lower-tier subcontractor management

_____ Very effectively
_____ Effectively
_____ Not very effectively

7. Would you consider using _____ again?

_____ Absolutely
_____ Yes
_____ Maybe, if _____
_____ No, because _____
_____ Not applicable or no opinion

8. With respect to the attitude of the personnel employed by _____

Were they professional and courteous?	_____ Yes	_____ No
Did they respond promptly to requests and problems?	_____ Yes	_____ No
Were they forthcoming with information and data?	_____ Yes	_____ No

9. Did _____ consider safety a high priority?

How did _____ react to safety directives and safety submittal requests? _____ Very well _____ Average _____ Not very well

Exhibit III
Typical Past Performance Questions
(Continued)

Did they follow their safety plan? _____ Yes _____ No

10. How well did _____ handle and account for Government property?

_____ Very well
_____ Acceptably
_____ Not very well

11. Was _____ cooperative and responsive to closeout requirements?

_____ Yes _____ No

12. How well did _____ respond to directed changes to the work?

_____ Very well
_____ Acceptably
_____ Not very well

How promptly did _____ respond to change requests?

_____ Very promptly
_____ Promptly
_____ Not very promptly

How realistic were their price changes relative to the changes in the work?

_____ Very realistic
_____ Acceptable
_____ Not very realistic

Exhibit IV
Evaluation Comments Worksheet

Minimum Requirements:

<u>Weakness</u>	<u>Strength</u>	<u>Comments</u>

Evaluation Factor:

<u>Weakness</u>	<u>Strength</u>	<u>Comments</u>

Evaluation Factor:

<u>Weakness</u>	<u>Strength</u>	<u>Comments</u>

Exhibit V-a
Confidentiality and Conflict of Interest Acknowledgement

UNIVERSITY OF CALIFORNIA

CONFIDENTIALITY AND CONFLICT OF INTEREST ACKNOWLEDGMENT

In anticipation of an evaluation of proposals submitted in response to Request for Proposal [RFP number] for the [Description] subcontract, the undersigned, serving as an evaluator and in his or her capacity as a University of California employee at [Lab Name & Acronym], acknowledges that he or she has read and understands the duties and requirements of confidentiality and conflict of interest, as noted below:

- 1) Evaluators shall hold in confidence any information concerning the evaluation or selection from anyone not also participating in the same proceedings, except where disclosure is required pursuant to applicable law or regulation, valid court order, or University policy. Evaluators should inform Procurement Management of any communication concerning the evaluation proceedings by any unauthorized person.
- 2) Evaluators, and their immediate family, shall not accept gifts, personal loans, advances or other financial or personal gain from any source which might affect the judgment of the Evaluator.
- 3) Evaluators shall notify Procurement Management and disqualify themselves from participating in any decision where he or she can reasonably expect the decision to impact his or her financial interests or the financial interests of his or her immediate family. (University of California Conflict of Interest Code, Section 9.5)
- 4) Evaluators shall not use information acquired through participation in the evaluation proceedings for personal gain.

Signature: _____

Name: _____

Date: _____

Exhibit V-b
Confidentiality and Conflict of Interest Certificate
UNIVERSITY OF CALIFORNIA

CONFIDENTIALITY AND CONFLICT OF INTEREST CERTIFICATE

In anticipation of my participation in the evaluation of proposals submitted in response to Request for Proposal (RFP number) for the (Title/Name of Project) subcontract, I certify that I will not disclose, except pursuant to applicable law or regulation or the order of a court of competent jurisdiction, any information either during the proceedings of the source evaluation or any subsequent time concerning the evaluation to anyone who is not also authorized access to the information in accordance with the policies of the University, law or regulation, and only then to the extent that such information is required in connection with such person's official responsibilities. Furthermore, I will report to the Chairperson any communication concerning the procurement or the committee's composition and activities directed to me from any source outside the committee.

I also certify that:

1. I shall not use "*privileged information*" acquired through participation for personal gain.
2. I am not aware of any matter which might reduce my ability to participate in the evaluation proceedings in an objective and unbiased manner, or which might place me in a position of conflict, real or apparent, between my responsibilities as an evaluator and other interests.

In making the certification I have considered all my financial interests and employment arrangements, including those of my spouse, minor children, and other members of my immediate household.

3. If, after the date of this certification, any person, firm, or organization with which, to my knowledge, I (including my spouse, minor children, or members of my immediate household) have a financial interest or with which I have an employment arrangement, submits a proposal or otherwise becomes involved in this procurement, I will so notify the Chairperson. Unless advised otherwise, I will not participate further in the evaluation.
4. Neither I, my spouse, minor children, or members of my immediate household will accept anything of monetary value from any person, firm, or organization seeking to do business with the University through this solicitation. (Even seemingly trivial courtesies can present the appearance of impropriety or create a subtle sense of obligation and so must be avoided.)

Signature: _____

Name: _____

Date: _____